

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 99-4035

LEWIS MERCADO, a/k/a Hector

Mercado,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of West Virginia, at Huntington.
Robert J. Staker, Senior District Judge.
(CR-96-165)

Submitted: September 30, 1999

Decided: October 20, 1999

Before NIEMEYER and LUTTIG, Circuit Judges,
and PHILLIPS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

Clinton W. Smith, Charleston, West Virginia, for Appellant. Ray
McVeigh Shepard, Special Assistant United States Attorney, Hun-
tington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Lewis Mercado pleaded guilty to conspiring to distribute and possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. § 846 (1994), and was sentenced to a term of 292 months imprisonment. Mercado's counsel has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), noting two issues but stating that, in his view, there are no meritorious issues for appeal. Mercado has filed a pro se supplemental brief. The Government had filed a motion to dismiss and, in response, Mercado has filed a "motion to suspend federal rules of appellate procedure." Because Mercado's notice of appeal is untimely, we dismiss this appeal for lack of jurisdiction.

The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods are "mandatory and jurisdictional." United States v. Raynor, 939 F.2d 191, 197 (4th Cir. 1991). Defendants in criminal prosecutions have ten days within which to file in the district court notices of appeal from judgments or final orders. See Fed. R. App. P. 4(b). The only exception to the appeal period is when the district court extends the time to appeal "[u]pon a showing of excusable neglect." Id.

The district court entered judgment against Mercado on December 11, 1998; Mercado filed his notice of appeal on December 23, 1998. On August 30, 1999, the district court denied Mercado's "motion to enlarge time for filing notice of appeal," which was not filed until August 12, 1999. Mercado's failure to note a timely appeal or obtain an extension of the appeal period leaves this Court without jurisdiction to consider the merits of his appeal. Accordingly, we grant the Government's motion and dismiss this appeal for lack of jurisdiction. We deny Mercado's "motion to suspend federal rules of appellate procedure." We further deny Mercado's counsel's motion to with-

draw, because this court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may renew his motion for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and oral argument would not aid the decisional process.

DISMISSED